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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 IN RE: PHENYLPROPANOLAMINE  
8 (PPA) PRODUCTS LIABILITY  
9 LITIGATION,

MDL NO. 1407

ORDER DENYING PLAINTIFFS'  
MOTIONS TO REMAND

10 This document relates to:  
11 See Appendix A

12 THIS MATTER comes before the Court on the motions of the  
13 plaintiffs named in Appendix A ("plaintiffs") to remand their  
14 cases to state court in Mississippi and Louisiana. The  
15 plaintiffs' complaints allege numerous claims against  
16 manufacturers of PPA-containing products, as well as in-state  
17 retail stores that sold those products (collectively, "the retail  
18 defendants"). Defendants removed these actions alleging that  
19 plaintiffs fraudulently joined the retail defendants solely to  
20 defeat diversity. Plaintiffs moved to remand to state court.  
21 The cases have been transferred to this Court as part of multi-  
22 district litigation ("MDL") No. 1407.

23 I. ANALYSIS

24 Although plaintiffs claim that each of them has sued a non-  
25 diverse retail defendant, the facts show otherwise.

26 The complaints of plaintiffs Donald, Gilchrist, and Oakley

1 are bereft of any allegations against any in-state defendants.

2 Plaintiff Terry alleges that he purchased a PPA-containing  
3 product at Fred's, Inc. d/b/a Fred's Discount Pharmacy  
4 ("Fred's"). Although Mr. Terry alleges that Fred's is a  
5 Mississippi corporation, defendants have presented un rebutted  
6 evidence that shows that Fred's is incorporated in Tennessee,  
7 where it maintains its corporate offices and principal place of  
8 business. See Affidavit of Michael R. Hodge; see also Morris v.  
9 Princess Cruises, Inc., 236 F.3d 1061, 1067-68 (9<sup>th</sup> Cir.  
10 2001)(noting that the court may consider "summary judgment-type  
11 evidence" to determine if joinder was fraudulent); 28 U.S.C. §  
12 1332(c)(1).

13 Accordingly, the Court finds that plaintiffs Donald,  
14 Gilchrist, Oakley, and Terry have not brought claims against any  
15 non-diverse defendants.<sup>1</sup>

16 Furthermore, the Court previously struck all pending motions  
17 to remand to state court and urged counsel to consider whether to  
18 re-file such motions, given the Court's denial of similar motions  
19 to remand in other cases. None of the plaintiffs listed in  
20 Appendix A to this order have presented the Court with a reason  
21 to depart from its prior rulings, and none of them have asserted  
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23 <sup>1</sup> Plaintiffs have alleged that regardless of the citizenship  
24 of their defendants, complete diversity does not exist because  
25 they have brought their claims with other plaintiffs who have  
26 sued non-diverse defendants. This argument, however, is moot  
because the parties have since filed individual severed  
complaints by order of this Court.

1 valid claims against any in-state defendants.<sup>2</sup> A further  
2 explication of the Court's reasoning can be found in the Court's  
3 prior rulings denying similar motions to remand to state court,  
4 including Pollard v. Bayer Corp., et al., Vick v. Novartis Corp.,  
5 et al., and Douglas v. Bayer Corp., et al.

6 II. CONCLUSION

7 The Court finds that plaintiffs Donald, Gilchrist, Oakley,  
8 and Terry have not brought claims against any non-diverse  
9 defendants. The Court further concludes that the remaining  
10 plaintiffs listed in Appendix A have failed to state a cause of  
11 action against the retail defendants, and that the failure is  
12 obvious according to the settled rules of Mississippi and  
13 Louisiana. As such, the Court finds that the retail defendants  
14 were fraudulently joined and complete diversity exists among the  
15 parties. The Court therefore DENIES plaintiffs' motions to  
16 remand the cases to the state courts.

17 DATED at Seattle, Washington this 5th day of May, 2004.

18  
19 s/ Barbara Jacobs Rothstein  
20 BARBARA JACOBS ROTHSTEIN  
21 UNITED STATES DISTRICT JUDGE

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22 <sup>2</sup>Plaintiff Watts alleges that in addition to a Mississippi  
23 retail defendant, he has sued a second non-diverse entity, Health  
24 Management Associates, Inc. d/b/a Madison County Medical Center  
25 ("MCMC"). In his operative complaint, however, Watts identifies  
26 MCMC as a Michigan corporation with its principal place of  
business in Florida, and despite defendants' claim of fraudulent  
joinder, plaintiff has not provided this Court with any evidence  
that MCMC is a non-diverse defendant.

# APPENDIX A

MDL Docket Number	Plaintiff's Name
03-3032	Jessica Acevedo
04-22	James Anderson, et al
03-3459	Ira Banks
03-2732	Lessie Brown
03-2737	Renee Butler
03-2708	George and Donna Campbell
04-20	James Chasey
03-3034	Mark Chatman
03-3419	Essie Clark
03-3753	Oliver Clay
03-3522	Rose Cooper
03-2739	Emma Davis
03-3204	Kenneth Davis
03-3752	Barbara Donald
03-2734	Lucille Fells
03-2796	Sherry Gaines
03-2743	Will Gaines
03-2723	Charlotta Gardner
03-3754	Argie Gilchrist
03-2736	Mary Good
03-3206	Patricia Green aka Patricia Greene
03-2794	Samuel Hawkins
03-2797	Cherrice Jamison
03-3033	Lee Johnson
03-2738	Mae Ruth and Joseph Landers

1	03-2795	Byron Mabry
2	03-3028	Ed Magee
3	03-2746	Marie Moore
4	03-3418	George Oakley
5	04-16	Louise Overstreet
6	03-3205	Ralph Roby
7	04-64	Ralph Scott
8	04-65	Serena Scott
9	03-2735	Lucian and Edna Smith
10	03-3460	Sharon Smith
11	03-3417	James Terry
12	03-3755	Nathan Townsend
13	03-2745	Sara Watson Truitt
14	03-2740	Marilyn Walker
15	03-3036	Tamara Wallace
16	03-2844	Anderson Washington
17	03-539	Rudy Watts